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U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY:______________
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

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| SHARON MAGNUSSON,<br>Plaintiff,<br><br>Vs.<br><br>OCWEN LOAN SERVICING, LLC, and NATIONSTAR MORTGAGE, LLC, and CENLAR FSB, and JANE AND JOHN DOES 1-10,<br><br>Defendants. | **COMPLAINT**<br><br>Case: 2:14cv00161<br>Assigned To : Warner, Paul M.<br>Assign. Date : 3/5/2014<br>Description: Magnusson v. Ocwen Loan Servicing et al<br><br>TRIAL BY JURY DEMANDED |

Comes now Plaintiff, Sharon Magnusson, in pro se, alleges against Defendant as follows:

**PARTIES, AND JURISDICTION**

1. This action concerns the purchase of real property located in Utah, Salt Lake County, 3016 West 1500 South, Bluffdale, Utah 84605 ('Home")

2. Plaintiff is an individual residing in Salt Lake County, State of Utah.

3. Defendant Ocwen Loan Servicing, LLC is a limited liability company organized under the laws of the State of Delaware which can be served through its Registered Agent, Corporation Service Company, 2180 South 1300 East, Suite 650, Salt Lake City, UT 84106.

4. Defendant Nationstar Mortgage, LLC ("Nationstar") is headquartered in

Lewisville, TX which can be served through its Registered Agent, Corporation Service Company, 2180 South 1300 East, Suite 650, Salt Lake City, UT 84106.

5. Defendant Cenlar FSB ("Cenlar") has a principle business location at 425 Phillips Blvd., Trenton, NJ 08618.

6. This court has jurisdiction pursuant to 28 U.S.C. § 1348 & 28 U.S.C. § 1332, and the amount in controversy exceeds $75,000.00.

## FACTS COMMON TO ALL ALLEGATTIONS

7. On or about August 15, 2007 Plaintiff signed a Note to purchase her Home. See the Deed attached "Exhibit A" which references the Note. Plaintiff does not have a copy of the Note.

8. A letter dated April 16, 2009 sent to Plaintiff stated that the Note was satisfied. See "Exhibit B".

9. On or about August 18, 2009 Plaintiff was instructed to make payments under the Note to Cenlar. See "Exhibit C".

10. Shortly after Plaintiff started making payments under the Note to Cenlar, Plaintiff approached Cenlar informing them that she was under hardship and requested some kind of relief.

11. Numerous attempts were made by Plaintiff to communicate with Cenlar for a some kind of relief on her loan with Cenlar. Each attempt made to communicate with Cenlar for some kind of relief failed or was rejected.

12. Because of Cenlar's refusal to discuss with Plaintiff in regards to any kind of relief, Plaintiff was forced to hire the services of MCK Solutions (BRG) who represented to

Plaintiff that BRG had the ability to obtain a refi or some type of work out plan or loan modification from Cenlar without requiring Plaintiff to fall behind on her payments.

13. BRG represented to Plaintiff that they could obtain for Plaintiff some kind of work out plan with Cenlar without requiring Plaintiff to fall behind on her payments and that this was BRG's specialty, and that they had been very successful in so doing.

14. Sometime in April, 2010 Plaintiff hired BRG for $3,500.00, and provided them all the necessary paperwork they requested in order for Plaintiff to obtain a loan modification or work out plan, or a refi with Cenlar. See "Exhibit D" which are documents supporting this allegation.

15. About eight months after Plaintiff hired BRG, in December 2010 Cenlar called Plaintiff and informed Plaintiff that a payment was missed for the month of May 2010. This was false because Plaintiff did not miss this payment.

16. Cenlar instructed Plaintiff to make a double payment for December in order to cover the May payment. Plaintiff believed that Cenlar's request for double payment was as act of fraud.

17. In light of the fraudulent attempt of Cenlar to collect on a payment that had already been paid, this attempt by Cenlar burdened Plaintiff with the extra requirement to make a double payment which Plaintiff could not do, this forced Plaintiff to fall behind on her payments which Plaintiff did not want to do.

18. Plaintiff maintained a watchful eye over BRG and was persistent with them in order to quickly get results with Cenlar so that Plaintiff could start making payments again, thus achieving that added security that she wasn't going to lose her home. This went on until the end of January 2011 whereupon Plaintiff discovered that BRG suddenly closed their door leaving

behind only a phone number.

19. Plaintiff received a letter dated January 31, 2011 from Cenlar stating that all payments are to be made to Ocwen. *See* "Exhibit H".

20. Shortly after discovering that BRG had closed its doors, Plaintiff immediately contacted Ocwen who agreed to consider looking at a work out plan.

21. When Plaintiff made contact with Ocwen, Ocwen informed Plaintiff that her payment for May 2010 was past due and if she didn't delay any longer in making this payment that it would not reflect on her credit, however Plaintiff had already made this payment.

22. During the time that Ocwen agreed to a work out plan Plaintiff provided all the necessary paper requested by Ocwen. On each and every time Plaintiff did this, Ocwen would deny having received all the documents and Ocwen would point to a new problem with them. This went on for about 14 months until Plaintiff hired an attorney Mr. Steve Christensen (See "Exhibit E") in order to keep Ocwen from randomly requesting changes to be made each time the packet was sent to them. (See "Exhibit F")

23. On or about October 11, Plaintiff received a notice of default while Plaintiff was seeking a work out plan from Ocwen.

24. Shortly after Plaintiff received the said notice of default Plaintiff retained Mr. Steve Christensen for $2,500.00 in order to stop the foreclosure process and to get some kind of work out on Plaintiff's loan.

25. Ocwen promised that Plaintiff's home would not be sold while Plaintiff's loan was under review. *See* "Exhibit G".

26. On the morning on April 9, 2012 Mr. Steve Christensen stated that a representative for Ocwen, Manager Faisal stated that Plaintiff's loan was currently still under

review. *See* "Exhibit G".

27. During the time between 6:00am and 9:40am on April 9, 2012 several Ocwen representatives stated to Mr. Steve Christensen they would stop the sale. *See* "Exhibit G".

28. Despite the fact that Plaintiff's loan was still under review and in direct violation of Ocwen's said promise, Ocwen sold Plaintiff's home on April 9, 2012 at 9:40am. *See* "Exhibit G".

29. Freddie Mac became the new owner of Plaintiff's home after the April 9, 2012 foreclosure.

30. Mr. Steve Christensen was not able to perform the services Plaintiff paid for and did not seem to put forth any effort to find relief for Plaintiff's loan nor stop the foreclosure sale, or stop the notice to quit.

31. On April 11 Plaintiff received a notice to quit. See Exhibit O.

32. Shortly after the sale Plaintiff was harassed by realtors who threaten Plaintiff with eviction. This propounded a very stressful time for Plaintiff which compounded her physical ailments. *See* "Exhibit R".

33. Very shortly after the sale Plaintiff informed Freddie Mac that Ocwen promised it would not sell Plaintiff's home while it was under review. See "Exhibit G".

34. On or about April 16, 2012 Ocwen denied Plaintiff a modification on her loan due to the fact that Plaintiff's home was sold at Ocwen's foreclosure sale. See Exhibit K.

35. Communications between Plaintiff, Freddie Mac and Ocwen ensued whereupon Ocwen reinstated Plaintiff's review upon which the continued harassments against Plaintiff to move from her home stopped.

36. On or about Apirl 30, 2012 Ocwen informed Plaintiff that they had been approved

for a work out and that they were sending paperwork to Freddie Mac to rescind the sale. *See* "Exhibit I".

37. On or about May 9, 2012 Plaintiff received a letter ("Modification Letter") from Ocwen congratulating and approving Plaintiff to enter into a period plan under the Home Affordable Modification Program. See Exhibit M.

38. The said letter instructed the following:

a) "[T]rial period payments" are to be made to Ocwen in the amount of $1732.46 beginning 06/01/12 and extending to 08/01/12. These payments would include an escrow amount of $269.90 for property taxes, insurance and other permissible escrow fees.

b) After all trial period payments are timely made, you mortgage will then be permanently modified.

c) Once Ocwen confirms you are eligible for a Home Affordable Modification and you have made your trial period payments timely, Ocwen will send you a modification agreement detailing the terms of your modified loan.

d) If payments are timely made and paperwork submitted by its deadline, we will not conduct a foreclosure sale.

e) If your loan is modified, we will waive all unpaid late charges.

39. Plaintiff timely made all the trial period payments. See Exhibit L.

40. Plaintiff made the first payment two weeks early on loan No. 708996954 per the Modification Letter. Plaintiff followed this payment with a phone call to insure this payment was correctly applied. Ocwen denied receiving this payment claiming the loan number referenced on the check was incorrect even though it matched the loan number written on the Modification Letter.

41. To avoid being late on the first payment Plaintiff sent another check which was received by Ocwen before the first payment was due and applied towards loan #0609799176.

42. In all times relevant to the Modification Letter, Plaintiff kept their payments 1 to 2 months ahead of schedule whereupon they made a total of 14 payments making their last payment to be due on September 1, 2013. *See* "Exhibit L".

43. After Plaintiff made the three necessary trial period payments, Ocwen did not give Plaintiff a loan modification agreement, in fact, despite Plaintiff's many attempt to communicate with Ocwen for over a year, Ocwen would not communicate with Plaintiff. *See* "Exhibit F"

44. On several occasions during these said 14 months of payments, Plaintiff requested the loan modification agreement from Ocwen as agreed upon, this Ocwen never did.

45. During these said 14 months of payments, Plaintiff also requested Ocwen to quick claim her home back to her.

46. Around the middle of March, 2013 Plaintiff started receiving many phone calls from Nationstar demanding a payment of over 77k to be made to them. Sometimes these phone calls came in as many as six times a day, nevertheless this did not deter Plaintiff from making payments to Ocwen.

47. To each and every phone call made by Nationstar, Plaintiff would not agree to send them anything without Nationstar's proof that they had a right to collect anything from her.

48. Sometime in late March or early April of 2013, Nationstar sent Plaintiff a request for payment totaling $77,134.80 to be paid by May 1, 2013. *See* "Exhibit S"

49. Nationstar sent Plaintiff a letter dated May 31, 2013 informing Plaintiff that effective May 16, 2013 Nationstar had become the new servicer of Plaintiff's loan and that all

future payments were to be made to them. *See* "Exhibit T".

50. Nationstar had made written attempts to collect monies from Plaintiff without providing any kind of written notice of their servicing rights.

51. On June 12, 2013 Plaintiff retained the law offices of Olsen Skoubye and Nielson ("Plaintiff's Attorney") in the amount of $1,000 to investigate more fully the debt of $77,134.80 that Nationstar claimed was owed, and to resolve to whom Plaintiff was to make her payments to.

52. On May 20, 2012 a Cancellation Of Notice Of Default ("Cancelation Of Default") was filed in the Salt Lake County Recorder's office. *See* "Exhibit U".

53. Nationstar sent Plaintiff a letter dated June 4, 2013 stating that Plaintiff was in default of her loan obligation as of 04/01/2011, and demanded that Plaintiff must pay $80,044.44 by 07/09/2013 or Nationstar would exercise their right to foreclose. *See* "Exhibit V".

54. Sometime during the later part of May or the first part of June of 2013, Plaintiff received another statement from Nationstar demanding payment of $83,079 due on July 1, 2013. *See* "Exhibit W".

55. A letter dated July 12, 2013 from the law offices of Halladay, Watkins & Mann, P.C. stated that foreclosure proceedings had begun on Plaintiff's Home and that she owed $483,220.65. *See* "Exhibit P".

56. A letter dated July 31, 2013 from Nationstar to Plaintiff's Attorney stated that Plaintiff's loan was not in active foreclosure. Nationstar also stated that once they receive the necessary loan modification documents from Ocwen they would honor it. *See* "Exhibit T".

57. Plaintiff's Attorney discovered that nine months into Plaintiff' "trial period payments" Freddie Mac on March 7, 2013 Quick Claimed Plaintiff's home back to Plaintiff

without notifying Plaintiff. See "Exhibit J".

58. On or about June 7, 2013 it has been discovered by Plaintiff that Ocwen had negatively affected Plaintiff's credit by falsely reporting 120 to 180 days past due payments. *See* "Exhibit Y".

59. Sometime in the first part of September, 2013 Obi from Nationstar called Plaintiff to let her know that they were sending her some paperwork no later then November, 2013 for her to sign. Obi called Plaintiff again around the end of January, 2014 inquiring to know if Plaintiff had received the paperwork upon which Plaintiff responded that she had not received any paperwork at all. Obi stated that they had mailed them out December 29, 2013.

60. During the said January call, Obi stated that perhaps they had sent the paperwork to Plaintiff's Attorney. Plaintiff was not told why, what and for what purpose that Nationstar was sending paperwork.

61. Several weeks after Obi called, Plaintiff contacted her attorney who said he had not received any paperwork form Nationstar or Obi.

62. Up until around February 5, 2014 Plaintiff's Attorney said he had made several recent attempts to contact Obi but Obi had not returned any calls.

63. As of February 28, 2014 neither Plaintiff or Plaintiff's Attorney have heard anything or received anything from Nationstar or Obi.

64. Sometime in early February, 2014 Protect My ID called and informed Plaintiff that somebody had changed their mailing address on February 1, 2014 with Experian. A week later Protect My ID called and said that Nationstar had been the responsible party who had changed Plaintiff's mailing address to an address belonging to Nationstar.

65. Since the first payment was due under the "trial period payments" any and all

payments not made on the loan after August 2013 have been and are being deposited into a special bank account on a monthly bases until the court decides to whom Plaintiff's mortgage payments are to be made to.

**FIRST CAUSE OF ACTION**
**(Declaratory Judgment — as to all the Defendants)**

66. Plaintiff hereby incorporates all preceding and forgoing paragraphs.

67. A justifiable controversy exists in that;

a) the Modification Letter charged Plaintiff 2% interest but does not state what type of interest this is,

b) and that the payments made pursuant to the Modification Letter does not state on what balance these payments are to be applied,

c) and that Pursuant to the Modification Letter, Plaintiff does not know to whom her payments are to be made to beginning September 2014 forward,

d) and that Nationstar alleges that Plaintiff is in default on her loan while Plaintiff alleges that pursuant to the Modification Letter she is not in default on her loan,

e) and that Nationstar has demanded at different times that Plaintiff pay $77,134.80 and $80,044.44 and $83,079.00 while Plaintiff alleges that pursuant to the Modification Letter she does not owe these amounts at all,

f) and that Ocwen did not have the right to negatively affect Plaintiff's credit.

68. Plaintiff rights are adverse in that Plaintiff has the right to know to whom she is to make her payments to which has been contaminated.

69. Plaintiff rights are adverse in that she has the right to continue to purchase her Home per the payment schedule as outlined by the Modification Letter without the requirement of any

default payments demanded by Nationstar or any other entity.

70. Plaintiff rights are adverse in that she has the right to enjoy her credit rating without any negative affect from Ocwen as stated above, or from any other entity that may negatively affect Plaintiff's credit rating as a result of her Note.

71. A judicial determination is needed to;

a) Clarify who owns the Note.

b) To determine that Plaintiff is entitled to a permanent Loan Modification based on the Modification Letter from the correct party.

c) The amount owing on the loan be reduced to an amount as guided by industry standards.

d) That the 2% interest rate as stated in the Modification Letter be redacted and that the permanent loan modification reflect no interest.

e) That any and all penalties and interest due from any kind of missed payments beginning from the origination of the loan until the beginning of the permanent loan modification be forgiven in its entirety.

## SECOND CAUSE OF ACTION
**(Breach Of Contract — As To Defendant Ocwen)**

72. Plaintiff hereby incorporates all proceeding and forgoing paragraphs.

73. Plaintiff and Ocwen entered into a contract indentified in this pleading as a Modification Letter.

74. This Modification letter is not dated, however acceptance of this contract between Ocwen and Plaintiff was to be initiated upon Plaintiff's first payment of $1,732.46 due by June 1, 2012.

75. The terms of this contract required that Plaintiff make three payments: 1st payment of

$1,732.46 by June 1, 2012, 2nd payment of $1,732.46 by July 1, 2012 and the 3rd payment by August 1, 2012.

76. Upon the timely receipt of these payments Ocwen agreed to permanently modify Plaintiff's loan and would waive all unpaid late fees and that Ocwen would not conduct a foreclosure.

77. As stated above, Plaintiff made all three of these payments on time.

78. Plaintiff made a total of 14 payments under the contract (Modification Letter).

79. Ocwen breached contract by failing to provide Plaintiff with a permanent loan modification after Plaintiff had fulfilled the terms of the contract.

80. Failure of Ocwen to provide Plaintiff a permanent loan agreement damaged Plaintiff in the amount of $24,254.44 Plaintiff paid Ocwen for a permanent load agreement.

**THIRD CAUSE OF ACTION**
**(Breach Of Covenant Of Good Faith And Fair Dealing — As to Defendants Ocwen and Nationstar)**

81. Plaintiff hereby incorporates all proceeding and forgoing paragraphs.

82. Pursuant to the Modification letter there would be no foreclosure of Plaintiff's home nor would there be any late fess or charges made against Plaintiff while the terms of the Modification Letter were met.

83. As stated above, Plaintiff met the terms of the Modification Letter.

84. Nationstar violated the promises made in the Modification Letters when Nationstar made attempts to collect late fees and charges as stated above, this accounted towards destroying Plaintiff's right to receive the fruits of the Modification Letter that promised her a permanent loan modification.

85. When Ocwen foreclosed on Plaintiff's home this violated promises made to Plaintiff in that they would not foreclose on Plaintiff's home while it was under review, this denied Plaintiff's right to receive the fruits of owning her home and incurred threats from realtors that she needed to move.

86. Ocwen violated Plaintiff's right to enjoy the fruits of a true credit report when Ocwen reported a false credit report as stated above—this violated the promises made in the Modification Letter.

## PRAYER FOR RELIEF

**WHEREFORE, Plaintiff prays for judgment against Defendants as follows:**

**87. Under the first cause of action Plaintiff prays for the following:**

a) That Defendants are to prove to the satisfaction of the court who owns the Note and who has the right by law to service the loan evidenced by the Note.

b) Failure of any of the Defendants in proving that one of them owns the Note, the Note shall be deemed as being void, and title to the Home shall be titled back to Plaintiff free of any encumbrances arising from the Note.

c) Plaintiff seeks punitive damages from each of the Defendants in the amount of $100,000.

d) Defendants shall equally pay one third of the sum total of all costs Plaintiff has suffered in association with this lawsuit.

**88. Under the second cause of action Plaintiff prays for the following:**

a) In the event that the above paragraph 94(b) is not awarded to Plaintiff, Plaintiff seeks judgment as follows:

b) That Plaintiff's payments made during the course of the Modification Letter be attributed towards principle due to the fact that the 2% interest found in the Modification Letter failed to disclose what type of interest it was.

c) Pursuant to Ocwen's account statement dated February 28, 2011 (See "Exhibit Q") the balance on Plaintiff's loan is $396,335.86. Deducting payments of $24,254.44 made during the Modification Letter brings a balance of $372,081.42.

d) The permanent loan modification shall reflect a new beginning balance of $372,081.42 with payments $1,732.46 to be made on the first of each month for 214 months with the 215$^{th}$ payment to be in the amount of $1334.98. This shall be a no interest loan for the reasons stated above.

e) That Ocwen be forbidden from ever selling this loan or causing any other party to service the loan.

f) In the event that Ocwen is sold or acquired by a new entity then it shall be deemed that the loan is paid in full and Ocwen shall be required to reconvey the home back to Plaintiff.

g) Regardless of paragraph 94(b), for punitive damages no less than $100,000 from Ocwen.

**89. Under the third cause of action Plaintiff prays for the following:**

90. That Ocwen reimburse Plaintiff in the amount of $2,500.00 it cost Plaintiff to help stop Ocwen from selling Plaintiff's home.

91. That Ocwen pay damages to Plaintiff $400.00 per month beginning June, 2013 upon which Plaintiff was turned down on a refi (See "Exhibit X"). These payments are to continue until Plaintiff's credit is cured allowing Plaintiff to refi.

92. For punitive damages in the amount of $100,000 from both Ocwen and Nationstar.

Dated this the 4th day of March, 2014.

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